

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint of Linda Szynkowicz, Middletown

File No. 2019-151

FINDINGS AND CONCLUSIONS

The Complainant alleged here separately that the Respondent Hamden Town Clerk failed to accurately track absentee ballot application distributions and failed to properly execute her responsibilities in issuing absentee ballots and under General Statutes § 9-140 (a) and (k).¹

Background and Procedural History

1. The events here concern the November 5, 2019 General Election in the Town of Hamden.
2. Vera Morrison was at all times relevant to the Instant Complaint the Town Clerk of the Town of Hamden.
3. Ms. Morrison retired from her duties during the pendency of this matter and is no longer the Town Clerk of the Town of Hamden.

COUNT ONE: Failure to Properly Maintain the § 9-140 (a) Absentee Ballot Log

Allegations

4. Specifically, the Complainant alleged that the Respondent Town Clerk failed to properly keep the log required in General Statutes § 9-140 (a) insofar as any absentee ballot applications issued to “institutions,” as that term is used in General Statutes § 9-169q through 9-169s were checked out in the name of the institution instead of the name of a particular individual person.

¹ The following are the Commission’s findings and conclusions based on those portions of the allegations which the Commission could reasonably construe as alleging facts amounting to a specific violation of those laws within the Commission’s jurisdiction. Any statements not addressed herein either did not specifically allege a violation or alleged facts which if proven true would not have amounted to a violation within the Commission’s jurisdiction.

Law

5. General Statutes § 9-140 provides, in pertinent part:

(a) Application for an absentee ballot shall be made to the clerk of the municipality in which the applicant is eligible to vote or has applied for such eligibility. . . . The municipal clerk shall maintain a log of all absentee ballot applications provided under this subsection, including the name and address of each person to whom applications are provided and the number of applications provided to each such person. Each absentee ballot application provided by the municipal clerk shall be consecutively numbered and be stamped or marked with the name of the municipality issuing the application.

. . . .

(k) (1) A person shall register with the town clerk before distributing five or more absentee ballot applications for an election, primary or referendum, not including applications distributed to such person's immediate family. Such requirement shall not apply to a person who is the designee of an applicant. . . . (Emphasis added.)

Procedural History

6. This matter was filed concurrently with a Declaratory Judgment action filed in Connecticut Superior Court in the name of four Hamden electors.

7. The Complaint in such Declaratory Judgment action was included with the Complaint filed with the Commission and alleged, in pertinent part:

15. The Town Clerk is charged with maintaining a log of all absentee ballot applications that are issued to persons within the Town of Hamden (the "Log"). See General Statutes § 9-140(a).

16. The Log indicates that hundreds of absentee ballot applications have been issued by the Town Clerk without compliance with the requirement that they be signed out to an accountable individual. Instead, these absentee ballot applications have been identified as being distributed to non-voting institutions within the Town of Hamden, including, but not limited to, Atria Larson Place,

Benchmark Senior Living at Hamden, Congregate Housing, Genesis Healthcare—Arden House, and Hamden Health Care Center (collectively, the "institutions").

17. These institutions do not constitute "persons" to whom absentee ballot applications may be lawfully issued within the meaning of General Statutes § 9-140(a).

18. Upon information and belief, the Town Clerk has issued absentee ballots in response to applications that were obtained and/or distributed unlawfully in violation of the Connecticut General Statutes.

8. In addition to the aforementioned allegations of failing to comply with General Statutes § 9-140, the complainants in the Declaratory Judgment also alleged Equal Protection violations under 42 U.S.C. § 1983.
9. The Defendant sought, and was granted, leave to remove the matter to the United States District Court for the District of Connecticut.
10. The Commission's review of the complaint was conducted concurrent to the Superior Court and District Court actions, but any resolution of the Instant Matter was held in abeyance until such actions were resolved as such actions materially overlapped.
11. In her Memorandum in Opposition in Superior Court, before the matter was removed, the Respondent Town Clerk responded in detail in a sworn affidavit concerning her handling of absentee ballots requested by institutions, as follows, in pertinent part:

3. Throughout my 24 years as town clerk, it has been my practice, in accordance with Connecticut General Statutes Section 9-140 et seq., to mail sequentially numbered absentee ballot applications and supporting materials to a designated person at Hamden nursing home and rehabilitation facilities in advance of an upcoming election, the purpose of which is to facilitate the dissemination of the applications to elderly and disabled citizens residing there.

4. In carrying out the practice described in Paragraph 3, it has also been my practice to list the name of the Hamden nursing home or rehabilitation facility on the public log of sequentially numbered absentee ballot applications, rather than the designated person at

each facility, so that the public may know exactly where those applications are being disseminated

5. In accordance with General Statutes § 9-140 et seq. the absentee ballot applications distributed to Hamden nursing home and rehabilitation facilities for the November 5, 2019 municipal election were consecutively numbered.

6. In accordance with General Statutes § 9-140 et seq. the absentee ballot applications distributed to Hamden nursing home and rehabilitation facilities for the November 5, 2019 municipal election were provided to a specific designated person for distribution.

7. In accordance with General Statutes § 9-140 et seq. the absentee ballot applications distributed to Hamden nursing home and rehabilitation facilities for the November 5, 2019 municipal election were disseminated by the designated person to individuals at the nursing home and rehabilitation facilities.

8. In accordance with General Statutes § 9-140 et seq. the absentee ballot applications distributed to Hamden nursing home and rehabilitation facilities for the November 5, 2019 municipal election were returned by the designated person to the Town Clerk's office with a certification log as to who completed the absentee ballot applications.

9. In accordance with General Statutes § 9-140 et seq. the unused sequentially numbered absentee ballot applications were returned to the Town Clerk's office with a distributor's log certified by the designated person used for distribution.

12. Included with the Town Clerk's Affidavit was a certified copy of the Absentee Ballot Application Log form created by the Secretary of the State, which, as asserted in the Complaint and admitted in the Town Clerk's Affidavit, included only the names of the institutions.
13. Also included with the Town Clerk's Affidavit was a certified copy of a *second* document, custom designed by the Town Clerk, which kept track of every "institutional" absentee

ballot distribution displayed in the Absentee Ballot Application Log, including but not limited to the *individual person* to whom the absentee ballot applications were issued.

14. After removal to the United States District Court, the matter was ultimately settled by the parties under the following terms in a Joint Stipulation accepted by the Court in full resolution of the matter:

1. Absentee ballot applications will only be signed out via the Town Clerk's Log to an individual person and not to an institutional entity, pursuant to Conn. Gen. Stat. § 9-140(a).

2. Any person who wishes to distribute absentee ballot applications to five or more institutional residents shall sign out the applications in person at the office of the Town Clerk.

3. A person shall register with the Town Clerk before distributing five or more absentee ballot applications, pursuant to Conn. Gen. Stat. § 9-140(k)(1).

4. The parties stipulate that the procedures for voting by absentee ballot in the State of Connecticut have changed due to the COVID-19 pandemic. The parties further stipulate that any new or different procedure regarding absentee ballots in the State of Connecticut implemented by the State of Connecticut, the Governor, Secretary of State or any other State or Federal official, department or agency, shall take precedence over and preempt any requirement of this stipulation.

5. The parties agree that neither is a prevailing party and each side shall bear its attorney's fees and costs incurred up until the date of this stipulation.

6. The parties consent to the jurisdiction of this Court in an application to enforce the terms of the agreement and the U. S. District Court will be the forum for such disputes. The parties agree that, in the event that an application to enforce the terms of this agreement is filed and the Court finds a constitutional violation, the prevailing party in such an action shall be entitled to reasonable attorney's fees and costs incurred for enforcing the agreement.

Analysis and Conclusion

15. While underlying lawsuits provided the Commission with sufficient evidence here, the Court did not make a determination on the main issue raised by the Complainant's affidavit, namely whether including just the name of the institution on the "Absentee Ballot Log" is sufficient to comply with the log requirements of General Statutes § 9-140 (a).
16. Moreover, the evidence submitted raised a second question also not resolved by the Court, namely whether the secondary Clerk-designed document could be taken in combination with the official SOTS-designed form as the "absentee ballot log" enumerated in § 9-140 (a).

Absentee Ballot Log Must Include the Identity of Individual Human Beings

17. Turning to the first question, the Commission concurs with the Complainant that the word "person" as used in General Statutes § 9-140 (a) means an individual human being and not an institution or other organization.
18. The evidence of the aforesaid is found throughout the election administration statutes of Title 9 (Chapters 141 through 154), which use "person" in every instance synonymously with "individual," starting right from General Statutes § 9-1, the definitional statute.²
19. This is contrasted with the campaign finance statutes found in Chapters 155 and 157 which specifically separate "individual" from "person" and define "person" more broadly to encompass non-individual entities such as committees and organizations.³
20. However, when used in the election administration statutes in Title 9 outside of Chapters 155 and 157, "person" means an individual human being.

² Including but not limited to the Commission's own enabling statutes in Chapter 141.

³ General Statutes § 9-601 reads, in pertinent part:

As used in this chapter and chapter 157:

...

(9) "Individual" means a human being, a sole proprietorship, or a professional service corporation organized under chapter 594a and owned by a single human being.

(10) "Person" means an individual, committee, firm, partnership, organization, association, syndicate, company trust, corporation, limited liability company or any other legal entity of any kind but does not mean the state or any political or administrative subdivision of the state.

21. Accordingly, when distributing absentee ballot applications, the Town Clerk must record the name of the individual human being to whom the absentee ballot applications have been issued, not just the organization such person may represent.
22. This is also keeping in line with the public policy represented by the administrative and tracking requirements in 9-140 (a), (k), and (l), which allows the public to know who is interacting with electors seeking absentee ballot applications.
23. Moreover, such administrative and tracking requirements are crucial investigatory tools for law enforcement agencies such as the Commission.
24. Allowing individuals to mask their identity behind the cover of an organization would thwart law enforcement investigations into impermissible activity surrounding the absentee ballot process.
25. For the reasons set forth above, the Commission concludes that the absentee ballot log enumerated in § 9-140 (a) must include the name of a “person” who is an individual human being and not just an organization and/or institution such person represents.

Absentee Ballot Log in § 9-140 Need Not Be in a Particular Format

26. Turning to the second question, the evidence here showed that the Respondent Town Clerk kept accurate internal records of each individual person who checked out absentee ballot applications on behalf of “institutions,” but did so on a Clerk-designed supplement to the main log form issued by the Secretary of the State.
27. The absentee ballot log requirement of § 9-140 (a) is straightforward. Such log of all absentee ballot applications must be maintained by the Town Clerk and include the following information:
 - a. the name of each person to whom applications are provided;
 - b. the address of such person; and
 - c. the number of applications provided to each such person.
28. Nowhere in § 9-140 (a) nor in any regulation is there a requirement that such log be maintained in a particular format and/or use only a particular form such that failure to do so would constitute a material violation of the statute.
29. Moreover, nowhere in § 9-140 (a) nor in any regulation is there a requirement that every document and/or page constituting such log be in the *same* format.

30. Importantly, the investigation obtained a statement from Director of Elections Ted Bromley affirming that the Secretary of the State does not require town clerks to use the Secretary-designed log and that any form of log is acceptable so long as it meets the substantive requirements of the statute.⁴
31. Considering the aforesaid, the Commission concludes that the Respondent Hamden Town Clerk met her responsibilities under § 9-140 (a) in maintaining a “log of all absentee ballot applications” in this instance.
32. Considering the aforesaid, **COUNT ONE** should be dismissed.

COUNT TWO: Improperly Issuing Absentee Ballots on Incomplete Applications

Allegations

33. Here, the Commission reviewed 17 absentee ballot applications submitted by the Complainant in which she alleged they contained “discrepancies” that suggested that the Town Clerk should not have issued ballots as a result.
34. The “discrepancies” fell into the following categories:
 - a. 14 of the applications had a Clerk-issued stamp of “Nov 05 2019” in Section 3 “Purpose of Application” instead of an affirmative marking by the applicant
 - b. 1 of the applications did not have the above stamp but had both “Election” and “Primary” checked off
 - c. 2 of the applications were missing a signature of the applicant in Section IV

Law

35. General Statutes § 9-140 provides, in pertinent part:

(a) Application for an absentee ballot shall be made to the clerk of the municipality in which the applicant is eligible to vote or has applied for such eligibility. . . **The application shall be signed by the applicant under the penalties of false statement in absentee balloting** on (1) the form prescribed by the Secretary of the State

⁴ See also, Advisory Opinion 2014-02 and In the Matter of a Referral by the Campaign Disclosure and Audit Unit of the State Elections Enforcement Commission, File Nos. 2015-108DNF and 2015-109DNF (SEEC and Secretary of the State may require the exclusive use of certain agency-promulgated forms).

pursuant to section 9-139a, (2) a form provided by any federal department or agency if applicable pursuant to section 9-153a, or (3) any of the special forms of application prescribed pursuant to section 9-150c, 9-153a, 9-153b, 9-153d, 9-153e, 9-153f or 9-158d, if applicable. Any such absentee ballot applicant who is unable to write may cause the application to be completed by an authorized agent who shall, in the spaces provided for the date and signature, write the date and name of the absentee ballot applicant followed by the word "by" and his own signature. If the ballot is to be mailed to the applicant, the applicant shall list the bona fide personal mailing address of the applicant in the appropriate space on the application.

(c) The municipal clerk shall check the name of each absentee ballot applicant against the last-completed registry list and any updated registry lists on file in the municipal clerk's office. If the name of such applicant does not appear on any of such lists, the clerk shall send such applicant a notice, in a form prescribed by the Secretary of the State, to the effect that (1) the applicant's name did not appear on the list of electors of the municipality at the time the application was processed, and (2) unless the applicant is admitted or restored as an elector of the municipality by the applicable cutoff dates an absentee ballot will not be mailed to him. Such notice shall not be so mailed if, prior to the mailing of the notice, the registrars provide the clerk with reliable information showing the absentee ballot applicant to be an elector of the municipality.

...

(g) (1) On the first day of issuance of absentee voting sets the municipal clerk shall mail an absentee voting set to each applicant whose application was received by the clerk prior to that day. When the clerk receives an application during the time period in which absentee voting sets are to be issued he shall mail an absentee voting set to the applicant, within twenty-four hours, unless the applicant submits his application in person at the office of the clerk and asks to be given his absentee voting set immediately, in which case the clerk shall comply with the request. Any absentee voting set to be mailed to an applicant shall be mailed to the bona fide personal mailing address shown on the application. Issuance of absentee voting sets shall also be subject to the provisions of subsection (c)

of this section, section 9-150c and section 9-159q concerning persons designated to deliver or return ballots in cases involving unforeseen illness or disability and supervised voting at certain health care institutions. (Emphasis added.)

36. General Statutes § 9-139a reads, in pertinent part:

(a) The Secretary of the State shall prescribe and furnish the following materials to municipal clerks: The absentee ballot facsimile, **the application for absentee ballot**, the inner envelope, the outer envelope provided for the return of the ballot to the municipal clerk, the instructions for the use of the absentee ballot and the envelope for mailing of such forms by the clerk to the absentee ballot applicant.

(b) **The application for absentee ballot shall be in the form of a statement signed under the penalties of false statement in absentee balloting. Each application shall contain (1) spaces for the signature under the penalties of false statement in absentee balloting of any person who assists the applicant in the completion of an application together with the information required in section 9-140, and (2) spaces for the signature and the printed or typed name of the applicant.**

(c) The instructions for the use of the absentee ballot shall be in plain language and shall include the steps to be taken if a vote is to be cancelled or changed, and shall also contain a simple and concise restatement of the provisions of subsection (l) of section 9-150a and section 9-159o concerning rejection of ballots marked in such manner as to identify the voters casting them, and withdrawal of ballots by persons who find they are able to vote at the polls.

(d) A sufficient supply of such instructions and envelopes shall be printed to supply the number which the municipal clerk requests or the Secretary of the State deems sufficient.

Investigation

15 Applications Alleging Discrepancies in Section III

37. The Complainant here alleged that in 15 of the applications, Section III was improperly executed and asserted that the applications should have been rejected.
38. Section III of the Application for Absentee Ballot, SOTS Form ED-3, Rev 2/09 used here, is entitled "Purpose of Application"
39. Section III has three subparts: A, B, and C.
- a. Subpart A States: "This application is for" and gives the elector the choice of "Election," "Primary," and "Referendum."
 - b. Subpart B States: "Date of Election, Primary or Referendum" and leaves space to fill in the date
 - c. Subpart C States: "For PRIMARY only, specify party in which applicant is eligible to vote."
40. In 14 of the 15 applications reviewed here, a large "NOV 05 2019" stamp covers all three subparts and no other marking is present.
41. In the remaining 1 application, both "Primary" and "Election" is checked, but no date is present.
42. The investigation showed that all the aforementioned 15 applications were received by the Respondent Town Clerk in October 2019, less than 4 weeks prior to the General Election.
43. The investigation showed that all the aforementioned 15 applications were issued absentee ballots by the Respondent Town Clerk.

Respondent's Reply

44. The Respondent Town Clerk replied that the stamp contained on 14 of the 15 applications was her own stamp, which she placed on all applications issued directly by her office.
45. The Respondent Town Clerk replied that in all 15 of the aforementioned applications, Section III was filled out sufficiently to inform her that the applicant sought an absentee ballot for the upcoming November 5, 2019 General Election and as all other portions of the application were compliant with General Statutes § 9-140, she was obligated to issue an absentee ballot to the applicants.

2 Applications Alleging Absentee Ballot Issued Where Applicant's Signature Was Missing

46. The Complainant here alleged that in 2 of the applications, Section VI was not signed and asserted that the applications should have been rejected.
47. Section VI of the Application for Absentee Ballot, SOTS Form ED-3, Rev 2/09 used here, is entitled "Applicant's Declaration" and contains language informing the applicant that the application is being made under the penalties of false statement in absentee balloting and informs the applicant of their option to sign the application through the use of an agent, as enumerated in § 9-140 (a) above. It leaves space for the applicant to sign and date the application.
48. The investigation confirmed that the Respondent Town Clerk accepted two applications with Section VI left blank.
49. The investigation also confirmed that both applicants were issued absentee ballot sets by the Respondent Town Clerk and both applicants executed and returned their absentee ballot.
50. The investigation was able to make affirmative contact with one of the two applicants and confirmed that she and no other individual submitted the aforementioned application and she and no other individual executed and returned her absentee ballot.

Respondent's Reply

51. The Respondent Town Clerk confirmed that she did issue absentee ballot sets on the aforementioned 2 applications missing a signature in Section VI. She asserted that it was her understanding that a missing signature was "*de minimis*" and she was obligated to issue the ballot sets after performing her duties to confirm the applicants' registration status and registered bona fide address enumerated in subsection (c) of § 9-140.

Analysis and Conclusion

15 Applications Alleging Discrepancies in Section III

52. All 15 applications here were received by the Town Clerk less than one month prior to the November 5, 2019 General Election, and in 14 of the 15 applications, Section III contained the Town Clerk's own stamp indicating the date of the November 5, 2019 General Election.

In one of the applications, the date of the election was missing and both "Election" and "Primary" were checked.

53. Turning the question here, the Complainant would have the Town Clerk here reject an applicant's request for an absentee ballot if Section III of the "Application for Absentee Ballot, SOTS Form ED-3, Rev 2/09" did not contain markings in subparts A and B.
54. However, in the Commission's review of General Statutes §§ 9-139a and 9-140, a rigid adherence to the Secretary's form is not mandated such that a town clerk would be barred from issuing an absentee ballot.⁵ While the Secretary's form contains several fields and selections, not all of these selections are strictly required by statute to be filled out by the elector in order to receive an absentee ballot.
55. Indeed, in at least 4 of the applications submitted by the Complainant, the "e-mail" field is left blank in Section I "Applicant's Information," but there is no statutory basis for a town clerk to refuse to issue an absentee ballot set based on an omission of this information.
56. The same applies here to these 15 applications. Based on the Commission's review of these applications, the Town Clerk had sufficient information to determine the identity of the elector and such elector's registered bona fide residential address as well as the election for which the applicants sought an absentee ballot. The applications were signed and dated by the applicants and were timely received.
57. Accordingly, the Commission concludes that the Respondent Town Clerk was obligated to issue absentee ballot sets in all 15 instances and met her responsibilities.

2 Applications Alleging Absentee Ballot Issued Where Applicant's Signature Was Missing

58. However, this was not the case in the 2 applications in which the applicant's signature was missing.
59. While a strict adherence to every item on the Secretary's form is not necessary, the clear statutory language in both 9-140 and 9-139a requires that an applicant sign the application and make the declaration under penalties of false statement before such applicant is eligible to receive an absentee ballot set.

⁵ Indeed, the Commission notes that § 9-140 (a) specifically bars a clerk from rejecting an absentee ballot application merely because it is missing the certifications required of assistants.

60. Accordingly, where an applicant has failed to sign the declaration, or have an authorized agent sign on such applicant's behalf, such a failure is not "*de minimis*" and a town clerk is not permitted to issue an absentee ballot set.
61. As such, the Commission concludes that the Respondent Town Clerk should not have issued absentee ballot sets in the aforementioned 2 instances.
62. While the Commission appreciates that the Respondent Town Clerk erred on the side of enfranchisement, in this instance the interests of enfranchisement were outweighed by the interests of protecting the integrity of the vote, which the Town Clerk risked compromising by issuing ballots on unsigned applications.
63. Fortunately, while the errors by either the electors or the Respondent Town Clerk here were not *de minimis*, the ultimate result of the errors was positive: eligible votes were cast by eligible voters.
64. That is, the evidence did not support a finding that any vote was cast here that ultimately would not have been permissible should everyone had strictly complied.
65. In consideration of the aforesaid, as well as the fact that the Respondent Town Clerk has retired from her former position, there is no public interest in taking further action beyond the above findings in Count Two.

ORDER

The following Order is recommended on the basis of the aforementioned findings:

COUNT ONE: Dismissed.

COUNT TWO: No Further Action

Adopted this 21 day of March, 20 22 at Hartford, Connecticut.



Stephen T. Penny, Chairperson
By Order of the Commission